

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Michael F. Disch,	)	
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Colby Braun,	)	Case No. 1:15-cv-087
	)	
Defendant.	)	

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Plaintiff is an inmate at the North Dakota State Penitentiary. He initiated the above-entitled action on June 30, 2015, with the submission of an application to proceed *in forma pauperis* along with a petition for habeas corpus relief pursuant to 28 U.S.C. § 2241. He subsequently elected to convert this matter to a civil rights action. The court proceeded accordingly, granting plaintiff leave to proceed *in forma pauperis* and ordering him to pay the civil filing fee in installments as mandated by 28 U.S.C. § 1915(b)(2).

On August 25, 2015, the court issued an order dismissing the above entitled action without prejudice pursuant to 28 U.S.C. § 1915(A). On December 8, 2015, plaintiff filed a “motion to remove the statutory filing fee imposed in this case.” The basis for the motion is that the court improvidently granted his request to proceed *in forma pauperis* as he accumulated three or more “strikes” under the Prison Litigation Act (“PLRA”) prior to the initiation of the above-entitled action.<sup>1</sup>

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<sup>1</sup> The Prison Litigation Reform Act (PLRA) contains what is commonly referred to as the “three strikes” provision, codified at 28 U.S.C. § 1915(g). This provision effectively bars a prisoner from bringing a civil action or appealing a judgment in a civil action *in forma pauperis* if, on three, more prior occasions, he filed an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim. See 28 U.S.C. § 1915(g); see also Jackson v. Auburn Corr. Fac., Nos. 9:07-CV-0651 and 9:07-CV-0659, 2009 WL 1663986 , at \*3 (N.D.N.Y. June 15, 2009) (Peebles, M.J) (“The manifest intent of Congress in enacting this ‘three strikes’ provision was to curb prison inmate abuses and to deter the filing of multiple, frivolous civil rights suits by prison inmates.”).

The court is not inclined to vacate its order granting plaintiff leave to proceed *in forma pauperis*. First, plaintiff was granted leave to proceed *in forma pauperis pauperis* and assessed the civil filing fee after he elected to convert this matter to a civil rights action. He cannot now avoid the consequence of his election. Second, he has already received the “benefit” of this court’s review of his pleadings. His motion (Docket No. 13) is therefore **DENIED**.

**IT IS SO ORDERED.**

Dated this 10th day of December, 2015.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court